IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Income Tax Appeal No. 60/2004
Commissioner of Income Tax -I vs. M/s Dinshaw Dairy Foods, Nagpur

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Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

CORAM : A.P. Lavande & R.V.More,JJ
DATE OF RESERVING : 3.8.2007
DATE OF PRONOUNCEMENT : 21.11.2007

Heard Mr. Anand Parchure, learned counsel for the appellant and Mr. K.P.Dewani, learned counsel for the respondent.

2. By this appeal under Section 260-A of the Income Tax Act, 1961 the revenue takes exception to the order dated 29th December, 2003 passed by the Income Tax Appellate Tribunal, Nagpur Bench, Nagpur (ITAT for short) in ITA No. 123/Nag/2003.

3. The above appeal was preferred by the revenue against the order dated 19.3.2003 passed by the CIT (Appeals) Nagpur by which the assessee was held eligible for deduction under Section 80 IA of the Income Tax Act and in respect of ESIC payment. The CIT also held that the payment towards ESIC does not come under the purview of Section 43 B of the Act and consequently directed to allow

deduction in the sum of Rs. 61,709/- for the assessment year 1999-2000.

4. In so far as the deduction under Section 80 IA of the Act is concerned, the Tribunal held that since the assessee was allowed deduction under Section 80 IA by the assessing officer for the initial assessment year i.e. 1992-93 there was no justification for denying the same for the subsequent years. In support of this finding the Tribunal relied upon the Judgment of this Court in CIT vs. Paul Brothers (216 ITR 548) and even the representative on behalf of the revenue submitted before the Tribunal that the issue was squarely covered in favour of the assessee by earlier decision of the Tribunal.

5. In so far the issue relating to dis-allowance of the E.S.I. liability under Section 43 B is concerned, the Tribunal relied upon the decision of Cochin Bench dated 16.5.1993 in ITA No. 550/coch/89 holding that contribution towards ESIC does not fall within the ambit of Section 43 B of the Act and consequently held that the CIT was justified in directing to delete addition made by the assessing officer under Section 43 B of the Act.

6. Mr. Parchure, learned counsel appearing for the revenue submitted that the assessee does not carry out

manufacturing process and as such CIT as well as ITAT have erred in allowing the claim of the assessee under Section 80 IA of the Act. In support of the submission that the activity carried out by the assessee in its dairy division is not manufacturing activity and as such the deduction under Section 80 IA of the Act could not have been allowed in favour of the assessee, Mr. Parchure relied several authorities. We do not deem it appropriate to refer to them in view of the order we propose to pass. Mr. Parchure further submitted that the revenue did not challenge the order passed by the assessing officer granting deduction under Section 80- IA of the Act for the initial assessment year 1992-93 since the tax effect was quite low.

7. In so far as dis-allowance of ESI liability under Section 43 B is concerned, Mr. Parchure submitted that the CIT as well as Tribunal was not justified in holding that the contribution towards ESIC does not fall within the ambit of Section 43 B of the Act and, therefore, the impugned order to the extent the Tribunal upholds the order of CIT to delete addition made by the assessing officer is liable to be set aside.

8. Mr. K.P.Dewani submitted that the impugned order passed by the ITAT cannot be faulted inasmuch as the Tribunal has relied upon the decision of this Court in CIT vs.

Paul Brothers (supra) in terms of which if certain deduction is permitted in a particular assessment year, the same could not be disallowed for subsequent assessment years. According to Mr. K.P. Dewani, no substantial question of law is involved in the present appeal.

9. Having considered the submissions made by the learned counsel for the parties and having perused the records we find no merit in the present appeal. The Tribunal was legally justified in placing reliance upon the Judgment in CIT vs. Paul Brothers (216 TR 548) and holding that once deduction under Section 80 IA was allowed by the assessing officer in the initial assessment year i.e. 1992-93 there was no justification in denying such deduction in the subsequent years. We find no merit in the submission of Mr. Parchure that the revenue was justified in not challenging the order passed by the assessing officer allowing deduction under Section 80 IA for the year 1992-93 on the ground that the tax effect was quite low. The revenue ought to have been aware that in case deduction was allowed in a particular year the same could not have been denied denying subsequent assessment years. The revenue ought to have, therefore, challenged the order passed by the assessing officer for the assessment year 1992-93. The revenue having not done so we are of the considered opinion that no fault can be found with the order passed by the Tribunal

which is impugned in the present appeal. Since we are dismissing the appeal by placing reliance upon the Judgment in CIT vs. Paul Brothers we do not deem it necessary to go into the issue as to whether the activity carried out by the assessee in dairy division constitute manufacturing process or not. We also do not deem it necessary to refer to several authorities relied upon by Mr. Parchure in support of the submission that the activities carried out by the assessee do not constitute manufacturing activities.

10. In so far as the order passed by the Tribunal confirming the order passed by the CIT directing to allow deduction claimed in respect of ESI payment is concerned, we find no merit in the submission made on behalf of the revenue. In our opinion, the Tribunal was justified in placing reliance upon the decision of Coaching Bench to hold that the contribution towards ESIC does not fall within the ambit of Section 43 B of the Act and consequently directing the deletion of the addition made by the assessing officer. We find no illegality or perversity in the findings recorded by CIT which has been confirmed by the Tribunal. In our opinion, no substantial question of law is involved in the present appeal and hence the appeal is rejected.

Judge **Judge**

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